

SUPPLEMENT TO APPROVED LOANS

OVERVIEW

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REFINANCING DISCUSSION

Subsequent Disclosure Requirements for Refinancings

Confusion is experienced by bankers and examiners regarding explanation of required disclosures pursuant to the closed-end credit provisions of Regulation Z, Real Estate Settlement Procedures Act (RESPA), and Home Mortgage Disclosure Act (HMDA).

An explanation of required disclosures for a "refinancing" follows:

The terms of the original note (#1) included 59 monthly payments and a balloon payment for the balance. The loan is secured by a 1-4 family residential dwelling.

A new loan is made for the amount of the balloon payment. (The borrower signed a new note (#2) for the balloon payment amount.) The terms of note #2 include 59 monthly payments and a balloon payment for the balance. The remaining terms of note #2 are the same as note #1, except the APR and monthly payment amounts declined due to a reduction in the interest rate.

Note #2 references that this loan is secured by the original deed of trust securing note #1. No new deed of trust is signed or filed. The bank did not charge any closing costs for the new loan, for example, filing fees, points, appraisal fees, etc.

RESPA and TIL are applicable to this transaction (determined to meet the definition of a "refinancing" versus a "renewal") in part, because of the definition of a "refinancing" in Section 226.20(a) of Regulation Z.

**REFINANCING
DISCUSSION**

TIL

Considerations

As stated in Section 226.20(a), a refinancing occurs when an existing obligation subject to closed-end disclosures is satisfied and replaced by a new obligation by the same consumer with the same lender. The key terms are "satisfied" and "replaced" and both terms must be met.

To qualify as a "refinancing", the new obligation must replace the prior obligation, regardless of whether the prior obligation's terms are changed. The new obligation must also involve the original creditor and the original consumer from the original obligation.

A new obligation that has a lower APR than the original obligation with a corresponding change in the payment schedule is not considered a refinancing and no further disclosures are required. A corresponding change would include a shortened maturity date, reduced number of payments, or smaller required payments; however, the Commentary makes clear that this exception **does not apply** if the maturity is lengthened or if the payment amount or number of payments is increased beyond that remaining on the existing transaction. (Refer to Comment 20(a)(2)-2)

In the example above, note #2 is a refinancing, as contemplated in the Commentary, because: (a) the APR was reduced and the maturity was lengthened; (b) the number of payments was increased beyond that remaining on the existing transaction; and (c) the payment amount was increased over what was required in the original obligation (note #1). Any one of the above stated occurrences will disqualify the new extension from consideration as a non-refinancing transaction. (Refer to Section 226.17(c)(1))

Please note that when reviewing a residential mortgage loan with a variable-rate feature that was not disclosed; if the lender includes a variable-rate feature at time of refinancing, a new disclosure is required. (Refer to Comment 19(a)-3)) For example, a renewable balloon-payment mortgage that was disclosed as a variable-rate transaction is not subject to new disclosure requirements when the variable-rate feature is invoked.

**RESPA
Considerations**

RESPA requires that pertinent and timely disclosures regarding the nature and costs of the real estate settlement process and is applicable to all federally related mortgage loans, with certain exceptions. (Refer to Section 2 of RESPA) A federally related mortgage loan is defined to include a refinancing. (Refer to Section 3500.2 (Federally related mortgage loan)(1)(i)) A refinancing of a transaction with the same lender is defined in RESPA to be similar to Section 220.20(a) of Regulation Z, including the five types of refinancing transactions which are not treated as refinancings and do not require subsequent disclosures (Refer to 3500.2 Refinancing)

**REFINANCING
DISCUSSION**

**RESPA
Considerations
(cont'd)**

If Regulation Z requires a subsequent disclosure so will RESPA, except that RESPA also includes refinancing transactions with a new lender to replace an existing obligation when no transfer of title is involved. (*Refer* to 3500.2 Refinancing); Preamble to HUD's Final Rule amending Regulation X, 59 Fed. Reg. 6505, 6506 (February 10, 1994))

**HMDA
Considerations**

The regulation requires covered transactions to report HMDA data for a given calendar year in which a final action is taken regarding applications for, and originations and purchases of, home purchase and home improvement loans, including refinancings of both. (*Refer* to Section 203.4(a) of Regulation C)

On December 9, 1994, the Board of Governors of the Federal Reserve System ("Board"), in its discussion of Purpose Code 3 in the preamble to its Final Rule amending Regulation C, stated the "rule limits reporting of refinancings to those that result in the satisfaction of an existing obligation and its replacement by a new obligation by the same borrower." (Preamble to Final Rule amending Regulation C, 59 Red. Reg. 63698, 63702 (December 9, 1994))

Although a refinancing involves the satisfaction of an existing obligation that is replaced by a new obligation undertaken by the same borrower; for Regulation C purposes it should not be reported if, under the loan agreement, the financial institution is unconditionally obligated to refinance the obligation, or the financial institution is obligated to refinance the obligation subject to conditions within the borrower's control. (*Refer* to Paragraph V.A.5 Code 3a of Appendix A of Part 203)

In the example above with note #1 and note #2, note #2 would be considered a refinancing under HMDA, and must be reported on the HMDA-LAR because the extension (note #2) of the loan was not unconditional in the original contract and whether or not to make the extension was under the control of the financial institution and not the consumer.

**Use of the Flow
Chart**

This note continues below with a flow chart outline which can be used for guidance when reading the regulations governing subsequent disclosures for the purposes of Regulation Z, RESPA and Regulation C. The outline has been prepared solely as a learning aid and can be used when reading the Federal Reserve's Regulations Z and C, and HUD's Regulation X. It is not a substitute for regulations, nor is it to be construed as a legal interpretation from the FDIC.

**This flow chart is for guidance only and is not an official FDIC document;
nor is it binding upon the FDIC or its Board of Directors.**

**GUIDELINES FOR SUBSEQUENT DISCLOSURES
PURSUANT TO
THE FEDERAL RESERVE'S
SECTION 226.20(a) OF REGULATION Z,
12 CFR SECTION 226.20(a);
PART 203 OF REGULATION C,
12 CFR PART 203,
AND
SECTION 3500.5(a) and (b)(1) - (7) OF REGULATION X,
OF THE OFFICE OF THE ASSISTANT SECRETARY FOR HOUSING –
FEDERAL HOUSING COMMISSIONER – HUD.
24 CFR SECTION 3500.5(a) and (b)(1) - (7)**

Revised June 11, 1996

This outline provides a flow chart for subsequent disclosures for the refinancing of loans to consumers. This outline has been prepared solely for guidance and as a learning aid and is to be used when reading the Federal Reserve's Regulation Z and C and HUD's Regulation X. It is not a substitute for regulations, nor is it to be construed as a legal interpretation of the FDIC's Legal Division.

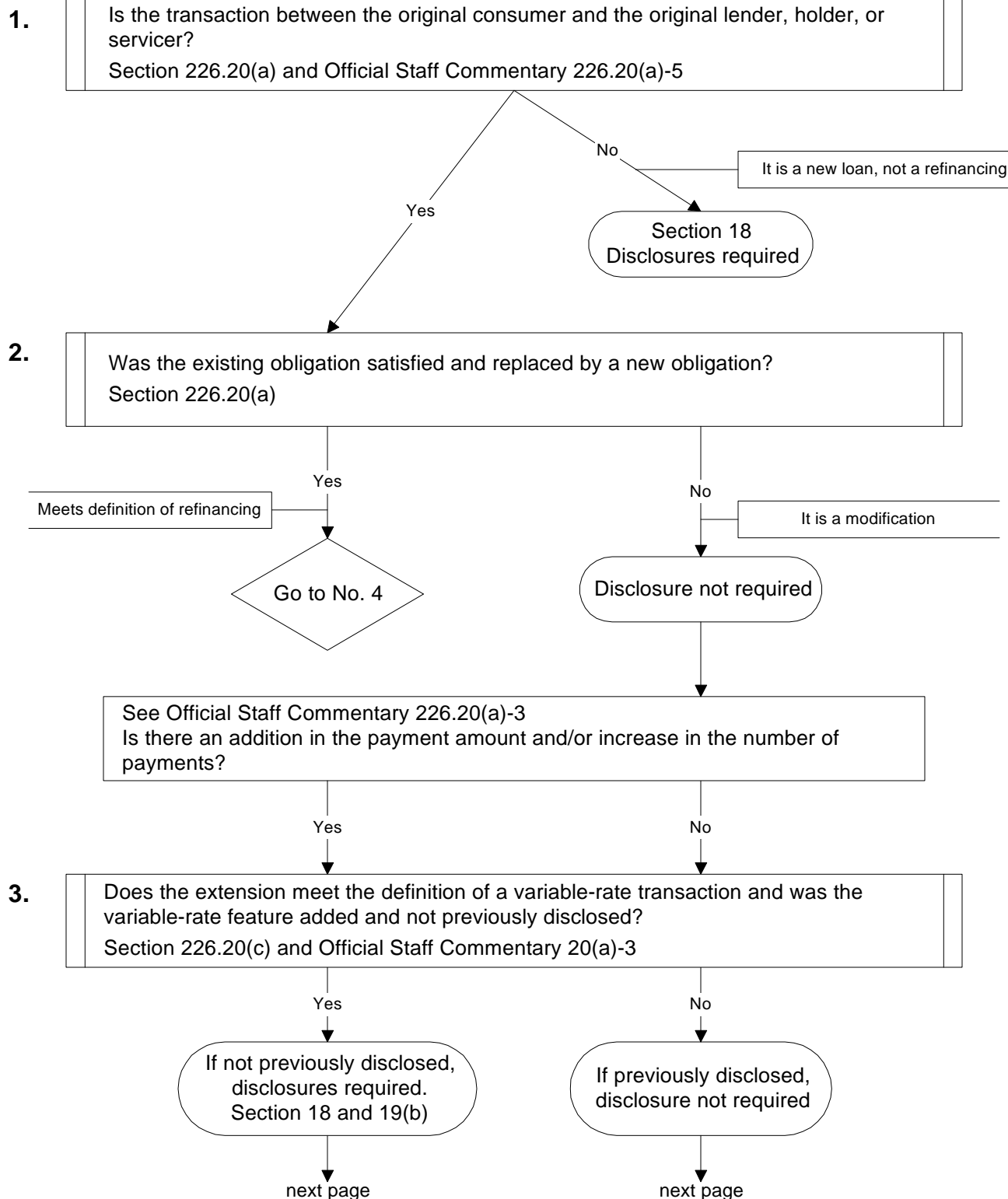
This outline is not an official FDIC document; nor is it binding upon the FDIC or its Board of Directors.

DISCLOSURE OF REFINANCINGS

For the purposes of Regulation Z and RESPA

A transaction is subject to Section 220.20(a) of Regulation Z, 12 C.F.R. Section 226.20(a), (refinancings) only if it meets the general definition of a refinancing.

Definition – general requirements:

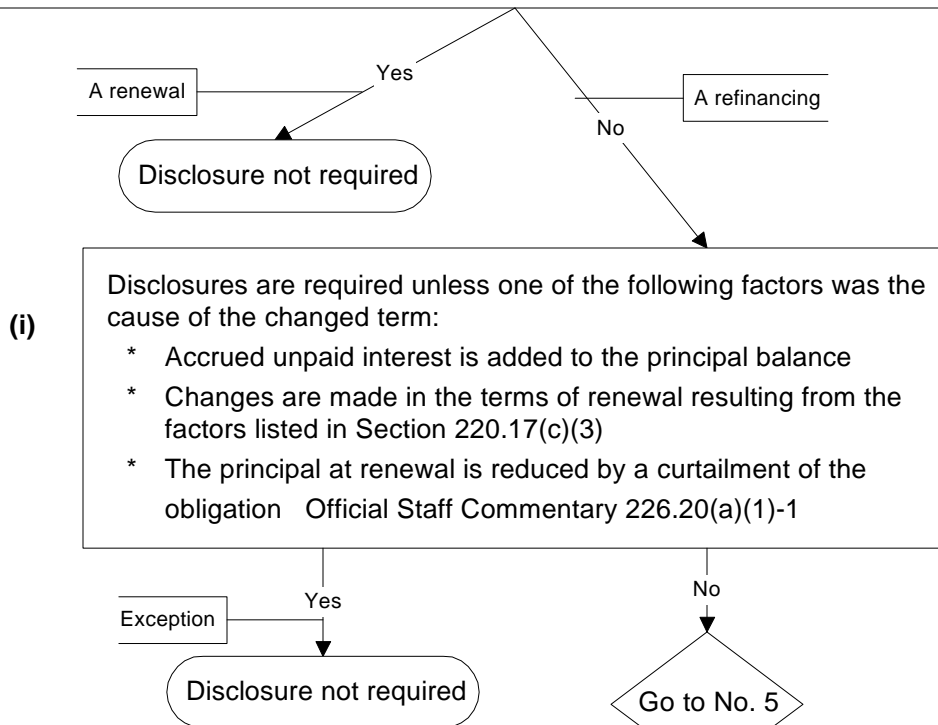


Exceptions:

Events that are not treated as refinancings, even if they satisfy the original obligation and substitute for it a new one.

4. Renewal – Section 226.20(a)(1)

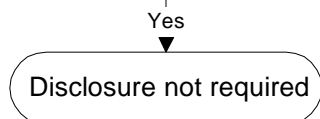
- a.** Is the transaction (either single-payment or periodic interest payment obligation) made on the same terms as the terms of the original obligation, other than the due date, and were Regulation Z disclosures provided on the original obligation?
Official Staff Commentary 226.20(a)-1 and 226.20(a)(1)-1



5. Annual Percentage Rate (APR) Reduction – Section 226.20(a)(2)

A corresponding change in the payment schedule includes a shortened maturity date, reduced number of payments, or smaller required payments.
Official Staff Commentary 226.20(a)(2)-2

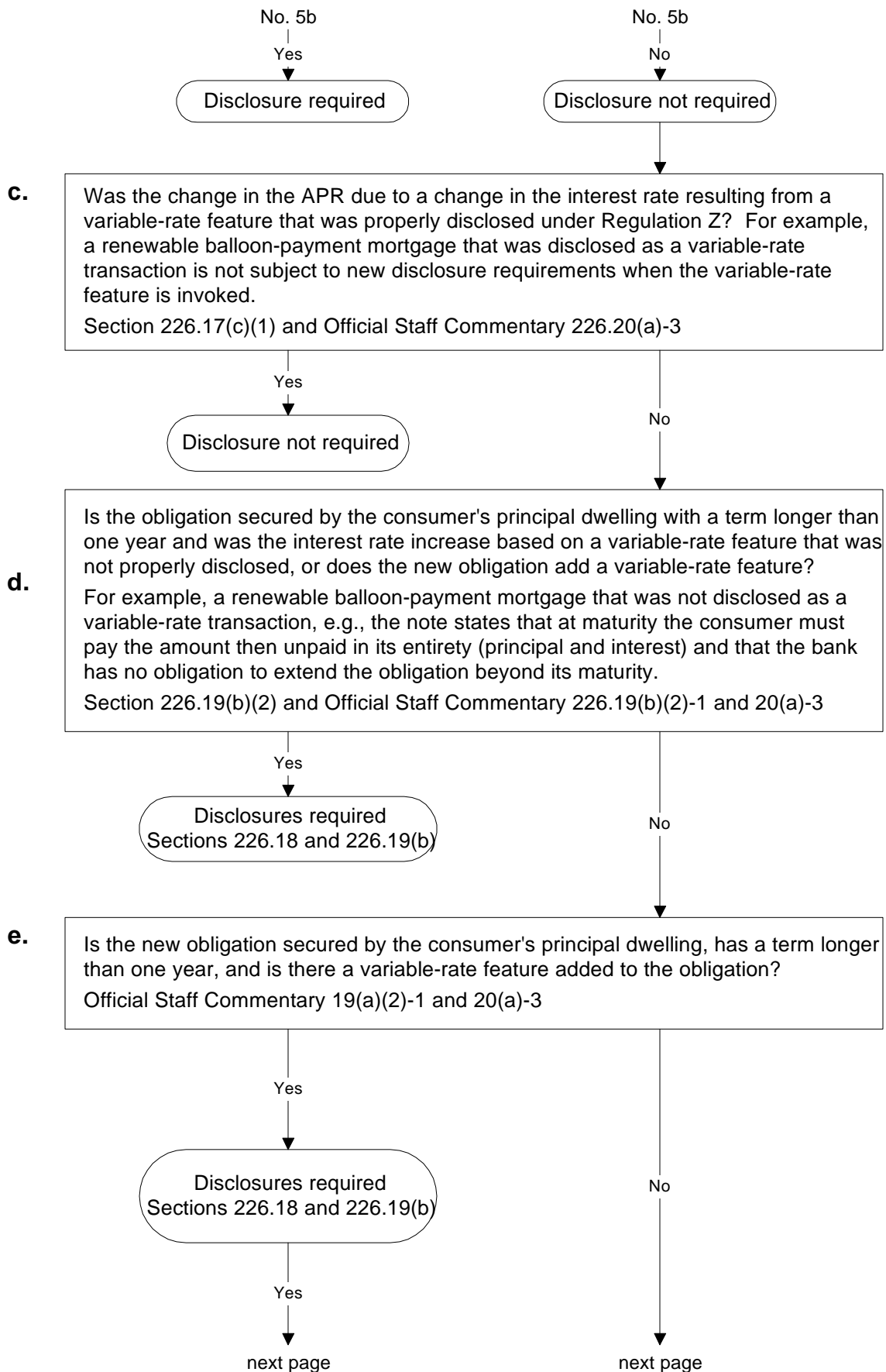
- a.** Does the new obligation have a lower APR than the original AND does it have a corresponding change in the payment schedule?
Official Staff Commentary 20(a)(2)-1 and 20(a)(2)-2



- b.** Does the new obligation have a lower APR than the original obligation AND is the maturity lengthened (or) is the payment amount or number of payments increased beyond that remaining on the existing transaction?
Official Staff Commentary 226.26(a)(2)-2

Yes
next page

No
next page



6. Court Agreements – Section 226.20(a)(3)

a.

Does the obligation arise as a result of a judicial proceeding, e.g., reaffirmations of debts discharged in a bankruptcy proceeding, settlement agreements, and post judgment agreements. Official Staff Commentary 226.20(a)(3)-1

Yes

Disclosure not required

No

Go to No. 7

7. Workout Agreements – Section 226.20(a)(4)

a.

Does the agreement, due to a delinquency, include charges relating to the restructuring of a payment schedule or the additional collateralization of the transaction; AND does it include an increase in the APR or is additional credit advanced beyond amounts already accrued plus insurance premiums? Official Staff Commentary 226.20(a)(4)-1

Example: The refinancing may involve the consolidation of several existing obligations, disbursement of new money to the consumer or on the consumer's behalf, or the rescheduling of payments under an existing obligation.

Yes

Disclosures required

No

Go to No. 8

next page

No. 7

No

8. Insurance Renewals – Section 226.20(a)(5)

a.

For the renewal of optional insurance purchased and its addition to the existing transaction, were appropriate disclosures provided for the initial purchase of the insurance? Official Staff Commentary 226.20(a)(5)-1

Yes

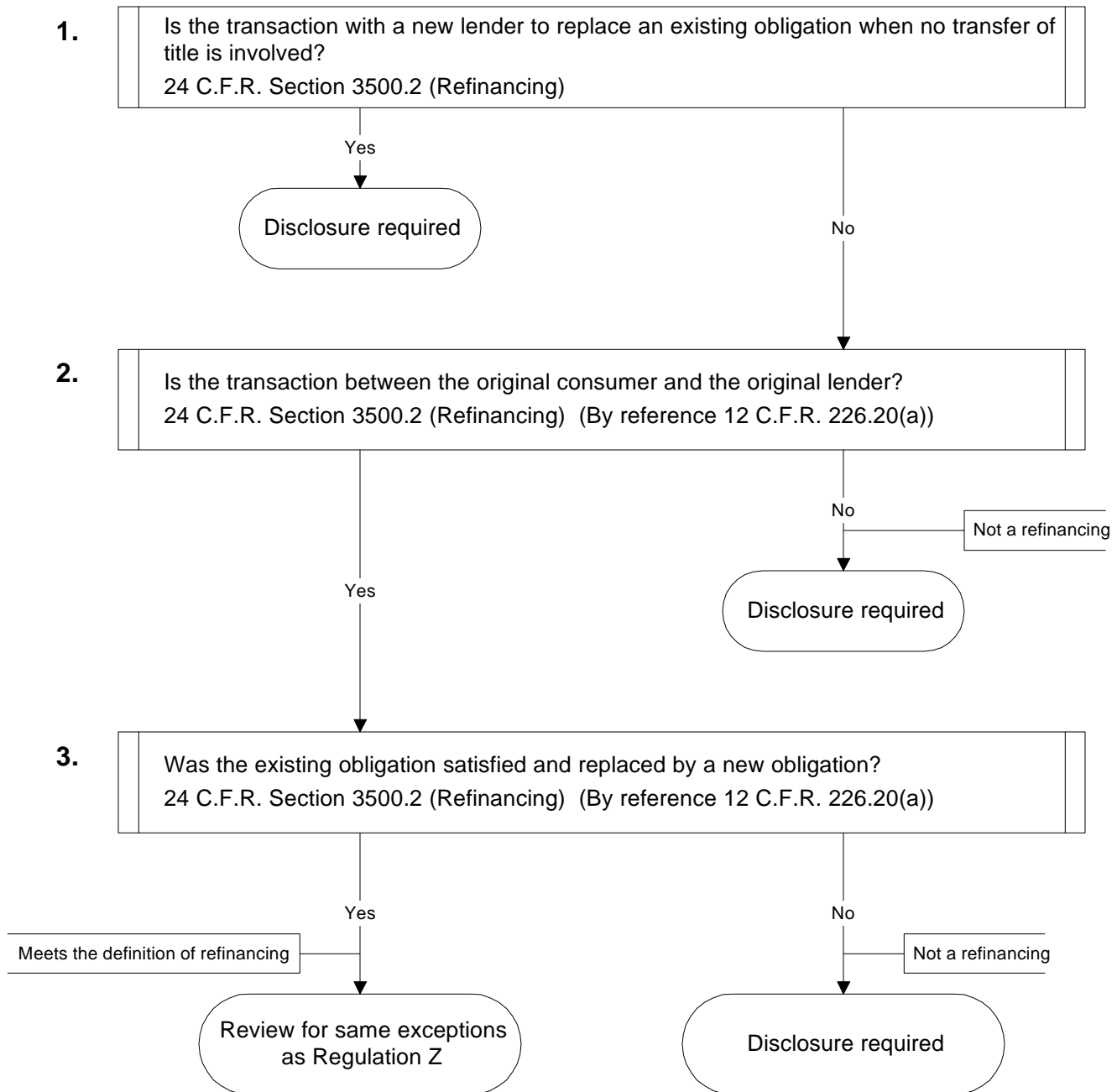
Not a refinancing

Disclosure not required

No

The transaction must be disclosed

FOR RESPA PURPOSES ONLY



FOR HMDA PURPOSES ONLY

Instructions for completion of Loan/Application Register, Refinancings –
Paragraph V.A.5. Code 3a of Appendix A to 12 C.F.R. Part 203:

